

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

Sprint Spectrum, L.P.

Petition for Declaratory Ruling

WC Docket No. 07-138
DA 07-2978

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND THE PEOPLE OF THE
STATE OF CALIFORNIA**

The California Public Utilities Commission and the People of the State of California (CPUC or California) submit this filing in response to the Public Notice the FCC issued on July 10, 2007 seeking public comment on the Petition for Declaratory Ruling (Petition) filed by Sprint Spectrum, L.P. (Sprint Spectrum). Specifically, Sprint Spectrum alleges that an order by the Kansas Corporation Commission (KCC) “requiring an eligible telecommunications carrier (‘ETC’) to apply federal Lifeline support to reduce the cost of *any* rate plan offered by an ETC (hereafter, the ‘Kansas Lifeline Rule’), as opposed to the carrier’s lowest cost generally available rate plan, violates federal law”.¹ The CPUC submits these comments in light of its own rule for

¹ Petition, p. 1.

ETC's offering Lifeline service in California, which is comparable to the "Kansas Lifeline Rule".

I. KANSAS LIFELINE RULE

In its *Order Adopting Requirements for Designation of Eligible Telecommunications Carriers*, the KCC found that "all ETCs shall allow Lifeline customers to select a plan and apply the discount to that plan".² The KCC, in reaching the conclusion that its policy was appropriate, evaluated comments by ALLTEL, which had opposed the proposal to apply a Lifeline discount to any plan of a customer's choosing.³ The KCC specifically noted as follows:

The [KCC] observes that the purpose of Lifeline is to make telephone service affordable to all customers to realize the goal of universal service. 47 U.S.C. § 254(c) defines universal service as "an evolving level of telecommunications services" that "are essential to education, public health, or public safety; have through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; are being deployed in public telecommunications networks..." It seems to the [KCC] that limiting Lifeline customer to the lowest cost plan that an ETC has available is contrary to the goals for universal service. The [KCC] also observes that the FCC ... at one time considered providing universal service support only to a primary line for each household, reasoning that one line would assure access to the network. FCC dropped its consideration of this issue because of pressure from Congress making it clear that all lines

² KCC *Order*, in Docket No. 06-GIMT-446-GIT, ¶ 66.

³ ALLTEL subsequently filed a request for the KCC to reconsider its determination. Both the request for reconsideration and the KCC decision are appended to the Petition.

should be supported. This seems to be an expression of intent that customers should have choices and that universal service programs, including Lifeline should support customer choice”.⁴

Accordingly, the KCC established its rule requiring ETCs to allow an eligible Lifeline customer to apply the appropriate Lifeline subsidy to any rate plan offered to all customers. In so doing, the KCC specifically cited the concern of its staff that it would be “discriminatory to limit Lifeline customers to only one plan when other customers may select the plan that suits their calling patterns best”.⁵ The CPUC has similar concerns, and because of those concerns, has adopted a rule similar to that of the KCC.

II. THE CALIFORNIA LIFELINE RULE

In a decision issued almost exactly a year ago, the CPUC adopted sweeping pricing reforms for incumbent telephone companies providing service throughout the state.⁶ In that decision, the CPUC stated the following:

With respect to Lifeline, we hold that we should maintain our current practice of requiring that packages be made available to Lifeline customers at a discount equal to the Lifeline subsidy. This policy ensures that Lifeline

⁴ KCC *Order*, ¶ 66.

⁵ *Id.*, ¶ 65.

⁶ See *Opinion*, Decision (D.) 06-08-030, in Rulemaking 05-04-005, *Order Instituting Rulemaking on the Commission’s Own Motion to Assess and Revise the Regulation of Telecommunications Utilities*.

consumers continue to realize the scope of the benefit they receive.⁷

This treatment of bundled services receiving Lifeline ... subsidies is consistent with comments indicating that any further restrictions could prevent low-income and rural customers from qualifying for bundles.⁸

In summary, bundles may include any telecommunications service, but we will continue to require that bundles be made available to Lifeline customers at a discount equal to the Lifeline subsidy.⁹

In Ordering Paragraph 15 of its D.06-08-030, the CPUC required that “[b]undles shall be made available to LifeLine customers at a discount equal to the LifeLine subsidy”.¹⁰

III. THE FCC SHOULD DENY THE RELIEF SPRINT SPECTRUM SEEKS

The CPUC had enacted its LifeLine pricing rule prior to issuance of D.06-08-030 in August 2006. That is, the CPUC had required application of the LifeLine subsidy to bundles before last year’s decision, without controversy. The CPUC’s determination last year to maintain the policy was significant because of the simultaneous elimination of most pricing controls for incumbent local exchange

⁷ *Id.*, slip. op., p. 193.

⁸ *Id.*

⁹ *Id.*, p. 194.

¹⁰ *Id.*, p. 281.

carriers. To date, no carrier has filed a formal or informal complaint with the CPUC about the requirement that the LifeLine subsidy be applied to bundles. Consequently, from the CPUC's perspective, the LifeLine pricing rule appears to be a success.

At the same time, the CPUC is mindful that it has not attempted to extend this requirement to any ETC that might also be a wireless provider. Given that the original purpose of the rule was to ensure the lowest rate plan would be available to consumers while preventing double recovery to the carrier,¹¹ the CPUC offers the following observation. Any wireless carrier seeking to be an ETC presumably would be doing so because its management has concluded the company can pursue a business plan that would accommodate a LifeLine service offering. In that event, the wireless carrier would be voluntarily subjecting itself to any individual state's ETC requirements. Should the FCC grant the relief Sprint Spectrum seeks, no state would be allowed to make its own independent determination that ETCs should apply a LifeLine subsidy for eligible customers to all rate plans, rather than just to the lowest-priced plan. The CPUC is now considering the possibility of including wireless service providers in its universal

¹¹*Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, ¶ 368 (1997).

service program.¹² Consequently, the CPUC urges the FCC not to adopt a policy that would limit California's ability to set the terms and conditions of its universal service program.

Respectfully submitted,

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¹² See CPUC *Rulemaking on the Commission's Own Motion to Review the Telecommunications Public Policy Programs*, R.06-05-028, July 26, 2006.